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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,740	08/18/2003	Stephan Kurt Gipp	1376.716US1	4103

21186 7590 06/05/2009
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EXAMINER

TO, JENNIFER N

ART UNIT	PAPER NUMBER
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2195

NOTIFICATION DATE	DELIVERY MODE
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06/05/2009

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/643,740
Filing Date: August 18, 2003
Appellant(s): GIPP, STEPHAN KURT

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 03/24/2009 appealing from the Office action mailed 08/12/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

WO 03/0385545	SHAFFER	05-2003
US 2003/0084085	BREIDENBACH ET AL	10-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-9, and 11-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaffer (WO 03/0385545), and in view of Breidenbach et al. (hereafter Breidenbach) (U.S. Publication No. 2003/0084085).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, and 11-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaffer (WO 03/0385545), and in view of Breidenbach et al. (hereafter Breidenbach) (U.S. Publication No. 2003/0084085).

As per claim 1, Shaffer teaches the invention substantially as claim including a method comprising:

creating, in a computer system, a resource consumer having a plurality of fields associated with the resource consumer, wherein the plurality of fields include a consumer type field, flavor field and a place field, the resource consumer including at least one of a process or a thread (page 8, lines 1-24; page 10, lines 1-4);

assigning the resource consumer one of a set of flavors (page 8, lines 4-5, 20-21);

determining whether the resource consumer is limited to receiving resources including hardware resources and any type of resources from a certain one of a set of resource providers, wherein each of the set of resource providers has one of the set of flavors (page 8, lines 25-28; page 10, lines 5-14);

if the resource consumer is limited to receiving resources from the certain one of the set of resource providers, marking the plurality of fields to indicate that the resource consumer is limited to receiving resources from the certain one of the set of resource providers (fig. 1; page 8, lines 25-28; page 10, lines 5-14);; and

allocating a resource to the resource consumer from one of the set of resource providers whose flavor matches the flavor assigned to the resource consumer (fig. 2; page 8, line 25 through page 9, line 25).

Shaffer did not specifically teach that any type of resources from a certain one of a set of resource providers (a certain one of a set of computing platforms) including software resources.

However, Breidenbach teaches that resources from a certain one of a set of resource providers (a certain one of a set of computing platforms) including software resources (paragraph [0030]).

It would have been obvious to one of an ordinary skill in the art at the time the invention was made to have combined the teaching of Shaffer and Breidenbach because Shaffer teaching of allocating resources to processing tasks and Breidenbach further supporting that the resources in Shaffer's system could including hardware and software resources would improve the integrity of Shaffer's system by efficiently utilizing the resources available in the system.

As per claim 2, Shaffer teaches that marking the plurality of fields to indicate that the resource consumer is limited to receiving resources from the certain one of the set

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of resource providers includes storing the plurality of fields in memory associated with the resource consumer (fig. 1).

As per claim 3, Shaffer teaches that the resource including a physical memory (page 5, lines 25-29).

As per claim 4, Shaffer teaches that a resource provider includes one or more central processing units (page 5, lines 20-29).

As per claim 5, Breidenbach teaches that the set of flavors includes application flavors, support flavors, and operating system flavors (page 5, lines 20-29, page 12, line 15 through page 13, line 16).

As per claim 6, Shaffer teaches the invention substantially as claim including a method comprising:

receiving a request for a resource from a resource consumer, wherein the resource consumer has a first flavor, wherein the resource including hardware resource, the resource having a plurality of fields associated with the resource consumer, wherein the plurality of fields include a consumer type field, flavor field and a place field, the resource consumer including at least one of a process or a thread (page 8, lines 1-24; page 10, lines 1-4);

determining whether the first flavor matches a second flavor of one of a set of nodes (page 8, lines 25-30);

if the first flavor matches the second flavor, determining whether the resource is available in the one of the set of nodes (page 9, lines 1-8); and

if the resource is available in the one of the set of nodes, allocating the resource to the resource consumer (page 9, lines 1-8).

Shaffer did not specifically teach the resource (computing platform) including software resources.

However, Breidenbach teaches the resource (computing platform) including software resources (paragraph [0030]).

It would have been obvious to one of an ordinary skill in the art at the time the invention was made to have combined the teaching of Shaffer and Breidenbach because Shaffer teaching of allocating resources to processing tasks and Breidenbach further supporting that the resources in Shaffer's system could including hardware and software resources would improve the integrity of Shaffer's system by efficiently utilizing the resources available in the system.

As per claim 7, Shaffer teaches that wherein the place field indicates that the resource consumer can only receive resources from a certain one of the set of nodes,

wherein each of the set of nodes has a node identifier, and wherein the method further includes determining whether the place field of the resources consumer matches the node identifier of the one of the set of nodes (fig. 1).

As per claims 8-9, and 11-34, they are rejected for the same reason as claims 1-7 above.

(10) Response to Argument

Appellant argues that Shaffer fails to teach “assigning the resource consumer one of a set of flavors” as required by independent claims 1 and 17. Appellant state that instead, Shaffer teaches assigning to each task a task type and a computer resource value (Brief filed 03/24/2009, section 6, page 5, 2nd paragraph). The examiner respectfully disagrees. The claim language in dispute states “assigning the resource consumer one of a set of flavors”. There are multiple interpretations for the claim limitation in its present form. One interpretation is that assigning the resource consumer (i.e. task, thread, process) to one of a set of flavors (i.e. type, characteristics, values). The claim language does not require that each resource consumer is associated with a flavor (Brief filed 03/24/2009, section 6, page 5, 1st paragraph) or an intermediate mapping between resource providers and resources consumers using flavors (Brief filed 03/24/2009, section 6, page 6, lines 1-3, and fig. 2). It is simply states that assigning resource consumer to one of a set of flavors. Shaffer teaches the interpretation as outline herein. As stated by Appellant, Shaffer teaches at page 8, lines 4-5, 20-21,

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assigning each task a task type and a computer resource value. The task referred in Shaffer is the resource consumer, and the task type and the computer resource value are the characteristics or one of a set of flavors. Thus, based on this interpretation, Shaffer adequately teaches Appellant claims of “assigning the resource consumer one of a set of flavors” as required by independent claims 1 and 17. In addition, Appellant further point out that Shaffer does not teach “assigning the resource consumer one of a set of flavors” because the use of flavors adds a layer of abstraction between the resource consumer and the resource provider is not present in the scheme shown in Shaffer. The examiner respectfully disagrees. Based on the interpretation earlier, the claim language does not require the use of flavors to add a layer of abstraction between the resource consumer and the resource provider that is dynamic and different from Shaffer. According to MPEP 2106 [R-6], section II, subsection C, states that USPTO personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim should not be read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) (claims must be interpreted “in view of the specification” without importing limitations from the specification into the claims unnecessarily). *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969). See also *In re Zletz*, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

Appellant argues that Shaffer fails to teach “determining whether the resource consumer is limited to receiving resources from a certain one of a set of resource providers, wherein each of the set of resource providers has one of the set of flavors” as required by claims 1 and 17. Appellant states that the reason that Shaffer fails to teach the limitation because Shaffer does not disclose “an intermediate mapping between resource providers and resource consumers using flavors” as Appellant argues earlier (Brief filed 03/24/2009, section 6, page 6, lines 7-12). Examiner respectfully disagrees. As previously explain in the previous paragraph and the interpretation above, the claim language does not require an intermediate mapping between resource providers and resources consumers using flavors as represent by fig. 2 of the Appellant application. In addition, there are multiple interpretations for the claim limitation in its present form. One of the interpretations is that the resource providers are the one that performs the determination to whether the resource consumer is limited from a certain set of resource providers. Based on this interpretation, Shaffer page 8, lines 25-28, teaches the computer platform (resource providers) determine whether the task type (i.e. resource consumer flavor) is the one that supported by the computer platform. Shaffer page 10, lines 5-16 further teaches that each of the computer platforms has one of the set of characteristic which support a certain type of tasks (i.e. wherein each of the set of resource providers has one of the set of flavors). Therefore, Shaffer teaches computer platform determining whether the task is limited to receiving resources from a certain one of computer platforms including itself, wherein each of computer platforms has one of the set of characteristics (task type that the computer platform support, wherein the

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task type is one of the flavors). Thus, based on this interpretation, Shaffer adequately teaches Appellant claims of “determining whether the resource consumer is limited to receiving resources from a certain one of a set of resource providers, wherein each of the set of resource providers has one of the set of flavors” as required by claims 1 and 17 by mapping task types to platform capabilities using a compatibility table.

Appellant argues that Shaffer fails to teach “allocating a resource to the resource consumer whose flavor matches the flavor assigned to the resource consumer”. Appellant state that instead, Shaffer teaches the computer platform is determine whether a task provide to the computer platform is one that is supported by that computer platform using a table (Brief filed 03/24/2009, section 6, page 7, lines 3-5). Examiner respectful disagrees. As stated by Appellant Shaffer teaches the computer platform is determine whether a task provide to the computer platform is one that is supported by that computer platform using a table, if so, the computer platform performs the task (Shaffer, page 8, lines 25 through page 9, line 7). Hence, Shaffer allocating computer platform to the tasks whose characteristics/flavors (type and resource value) matches the characteristics/flavors assigned to the tasks by determining whether a task provide to the computer platform is one that is supported by that computer platform using a table, and when the computer platform accept the tasks and perform the tasks, Shaffer is in fact finishing allocating the computer platform to perform the task. Therefore, Shaffer adequately teaches Appellant claims of “allocating a resource to the resource consumer whose flavor matches the flavor assigned to the resource consumer” as required by claims 1 and 17.

Appellant argues that Shaffer fails to teach “determining whether the first flavor matches a second flavor of one of a set of nodes” as required by claims 6 and 22. Again, Appellant based on the same rational as previously addressed above, to support that Shaffer fails to address the requirement of the claims. Examiner respectful disagrees. Based on the previously explanation, and the teaching of determining whether the task type (first flavor) is matches the task type that support (second flavor) by the computer platform (each computer platform has a set of nodes, Shaffer, page 5, lines 27-28) as suggested by Shaffer, page 8, lines 25-30 and fig. 2, hence Shaffer adequately teaches Appellant claims of “determining whether the first flavor matches a second flavor of one of a set of nodes” as required by claims 6 and 22.

Appellant further agues that Shaffer fails to teach the limitation as required by claims 11, 14, 27 and 30 by repeating the same argument as claims 1, 6, 17, and 22 above. Examiner respectful disagrees for the same reason and explanation above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Jennifer To/

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